IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 537 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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ASSITANT COLLECTOR OF CUSTOMS

Versus

JUMA AMAD PADHIAR (DISMISSED)

Appearance:

1. Criminal Appeal No. 537 of 1989

MR JS YADAV for Petitioner No. 1

NOTICE SERVED for Respondent No. 2-4

MR ND GOHIL, ADDL.PUBLIC PROSECUTOR for Respondent No. 5

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 26/07/2001

ORAL JUDGEMENT

In this case Mr. B.P. Munshi was initially appearing for the appellant - complainant as a panel

lawyer. On earlier occasion when this matter was placed before my learned brother Mr.Justice R.P.Dholakia on 1.2.1999, Mr. Munshi had filed sick note. With anguish the learned Judge adjourned the matter with the observation that if the Customs Department does not choose to proceed with the matter, then costs shall be awarded against them and if in future the Department or its Counsel act in this fashion, then some more steps will be taken against them. Thereafter, on number of occasions this matter was adjourned from time to time before different Hon'ble Judges of this Court.

Today, Ms.N.B. Munshi for Mr. B.P.Munshi stated at the bar that now Mr. B.P.Munshi is no more on panel and therefore, his name may be deleted as Mr. J.S. Yadav is now appearing for the appellant Customs Department.

When at 12.30 noon this matter was called out, it was brought to my notice that learned Counsel Shri J.S.Yadav appearing for the appellant Department has also filed sick note.

It is unfortunate that inspite of the strong observations made by the learned Single Judge of this Court in this matter on 1.2.1999, the appellant Department and its Counsel continue to behave in the same fashion.

Sick note does not count in criminal matters and this Court cannot wait for indefinite period for the Counsel of the appellant complainant. This is an appeal against the order of acquittal dated 19.5.1988 passed by the Court of learned Chief Judicial Magistrate, Kutch at Bhuj in Criminal Case No. 1438/85 filed by the appellant complainant against the respondent accused for the offence under Section 135 of the Customs Act. Leave was granted and the appeal was admitted way back on 9.8.1989. Endorsement made on the Board shows that today it is listed for 48th time.

The appeal against respondent No.1 is already dismissed for non-prosecution as per order dated 5.2.1993. In view of the judgement of the Hon'ble Supreme Court, Criminal Appeal cannot be dismissed for default. Therefore, I have decided this appeal on merits in absence of the learned Counsel for the appellant. Though served nobody appears for the respondents accused.

Having carefully gone through the judgement and order of acquittal dated 19.5.1988 passed by the learned

Chief Judicial Magistrate, Kutch, it appears that the respondents were charged for smuggling charas to India from Pakistan, which was seized on 2.6.1984 by the Customs Department. It was seized from the open place. The complainant failed to prove its case against the respondents - accused Nos. 1 to 3 that they brought the muddamal `charas'. When the prosecution failed to prove its case against the respondents accused that they were in conscious possession, then there would not be any other alternative for the Court but to acquit them. The allegation made against accused Nos. 5 and 6 was that they brought it in their bullock cart. That is also not proved.

In such type of case where the offence alleged to have been taken place way back in 1984 i.e. more than 17 years from today, then on the basis of the sole statement of the accused under Section 108 of the Customs Act, it would be difficult for this Court to interfere with the order of acquittal passed by the trial Court.

In view of the above discussion, this appeal fails and is dismissed.

(B.J.Shethna, J.)

*/Mohandas